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EXAMINER

DAILEY, THOMAS J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DARYL E. ANDERSON, PETER FRICKE, and ANDY VAN
BROCKLIN

Appeal 2009-006609
Application 10/617,001
Technology Center 2400

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and JAY P.
LUCAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL ¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-12, 17-24, 26, 27, and 29-37. Claims 13-16, 25, 28, and 38 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Invention

Disclosed are systems and methods for transmitting graphical data via a communication line. For example, in one embodiment, a system includes means for receiving voice data, means for generating graphical data representative of a user input, and means for simultaneously transmitting the voice data and information representative of the generated graphical data via a communication line such that a bandwidth of the communication line is not exceeded.
(Abstract, Spec. 25; Figs. 1-4).

Representative Claim

1. A method for transmitting graphical data via a communication line, comprising:

generating graphical data representative of a user input;

buffering the graphical data in memory; and

transmitting portions of the graphical data over the communication line to a remote device at a controlled rate that does not exceed a predetermined maximum data transfer rate at which a bandwidth of the communication line would be exceeded.

Prior Art and the Examiner's Rejections

The Examiner relies on the following references as evidence of anticipation and unpatentability:

Kishimoto	US 4,597,101	Jun. 24, 1986
Laube	US 4,653,086	Mar. 24, 1987
Torihata	US 4,794,634	Dec. 27, 1988
Lamb	US 6,791,571 B1	Sep. 14, 2004 (filed Feb. 27, 1999)

Dependent claim 3 stands rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite. Claims 1-12, 21-24, and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Laube. All other claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 17-20 and 27, the Examiner relies upon Laube in view of Lamb. Next, as to claims 29-36, the Examiner relies upon Laube in view of Torihata. Lastly, this latter combination of references is utilized along with Kishimoto to reject claim 37.

Claim Groupings

Based upon Appellants' arguments in the Brief on appeal the rejection under the second paragraph of 35 U.S.C. § 112 of dependent claim 3 is treated separately from all the art rejections. The Brief presents arguments as to each independent claim separately among all of the art rejections. No arguments are presented as to any dependent claim with respect to any rejection over prior art.

ANALYSIS

Except for the rejection under 35 U.S.C. § 112, paragraph 2, we refer to, rely on, and adopt the Examiner's findings and conclusions set forth in the Answer with respect to all the art rejections pertaining to all the claims on appeal. Our analysis here will be limited to the following points of emphasis.

With respect to the rejection of dependent claim 3 under the second paragraph of 35 U.S.C. § 112, we reverse this rejection. The issue here appears to focus upon the use of the term "approximately" as recited in claim 3. Parent independent claim 1 recites that certain portions of graphical data are transmitted over a communication line to a remote device "at a controlled rate that does not exceed a predetermined maximum data transfer rate at which a bandwidth of the communication line would be exceeded." Dependent claim 3 in turn more specifically refines this recitation by reciting "such that no more than approximately 2 kilobits of graphical data is transmitted per second."

Although we agree with the Examiner that the use of the term "approximately" is a relative term, as Appellants' positions in the Brief and as recognized by the Examiner at page 18 of the Answer, the referenced portions at the bottom of page 8 of the Specification as filed indicate that the recitation in dependent claim 3 is consistent in the manner in which this feature is disclosed. That the transmission may very well exceed 2 kilobits as recited in dependent claim 3 is not inconsistent or necessarily indefinite with the predetermined maximum data transfer rate as recited in parent independent claim 1. Dependent claim 3 appears to us to more explicitly recite the meaning of the terminology "predetermined maximum data

transfer rate” as being within the realm of approximately 2 kilobits, which permits it to exceed or be slightly less than the data rate.

From the perspective of one of ordinary skill in the art, we find no inconsistency or indefiniteness within 35 U.S.C. § 112, 2nd paragraph. As such, the rejection of dependent claim 3 under the 2nd paragraph of 35 U.S.C. § 112 is reversed.

Before we treat in detail the rejections over applied prior art, we make reference to Appellants’ discussion of implementing in a single device the ability to transmit telephone and graphical data at the same time. Appellants’ assessment of the prior art at Specification page 2, lines 10-13, is reproduced here:

To implement such a device, however, the rate of data transfer must be limited due to the limited bandwidth of telephone systems (*i.e.* plain old telephone systems (POTS)) to ensure that the voice signals transmitted across the telephone line, or the graphical data signals, are not lost during transmission.

Based upon what the Appellants have recognized here to be in the prior art, the actual data transfer rate for the device claimed is limited to the limited bandwidth of the telephone systems to which they would be connected to ensure that both types of data, voice and graphical, would not be lost during transmission. It appears to us that the same concepts are set forth among the Examiner-noted teachings in Laube, although they are set forth in slightly different terminology.

Laube’s Figures 1 and 2 depict a single device for simultaneously transmitting voice and graphical data. The frequency multiplexer 88 in

Figure 2 is initially stated to perform a function at column 5, lines 50-51, where it states that this element “simultaneously transmits voice and graphical information within a limited bandwidth” (emphasis added). In a corresponding manner, the Examiner-noted teaching at column 7, lines 5-10, states “The frequency multiplexer 88 provides for the simultaneous transmission of voice and redundancy reduced graphical data with the redundancy reduced graphical data being transmitted via a narrow bandpass range within the bandwidth of the telephone channel” (emphasis added).

Thus, from the perspective of one of ordinary skill in the art, the actual data rate itself must be limited or otherwise controlled such that it does not exceed the predetermined maximum data transfer rate of the bandwidth that is associated with the communication line, such as the telephone channel illustrated and discussed in Laube. To the extent that Appellants in the Brief, as to independent claims 1, 6, 24, and 26, argue the latter language of each of these claims to not be taught by Laube, we strongly disagree. Thus, in the context of an artisan’s understanding, the art recognizes that the transmission rate itself should no exceed the bandwidth of the available transmission medium.

As it pertains to the feature of independent claim 6 that the transmission is such that less than all of the generated graphical data is transmitted, we agree with the Examiner’s positions in the principal Brief on appeal that the noted teachings we quoted earlier at column 7 of Laube relating to the redundancy reduced graphical data being transmitted is consistent with and reads upon the claimed feature argued not to be present. The reduced redundancy taught in the early lines at column 7 occurs to reduce the transmission bandwidth. This essentially amounts to a data

compression function stated in other words. The rejection of claims 1-12, 21-24, and 26 and under 35 U.S.C. § 102 is affirmed.

Turning next to the rejection of representative independent claim 17 and the corresponding recitation in independent claim 27, we also agree with the Examiner's position with respect to the combinability of Laube and Lamb. Initially the Examiner's position at page 9 of the Answer concerning the combinability of the teachings of Laube and Lamb is noteworthy since the Examiner recognizes that Laube does not disclose that the coordinate values associated with the graphical tablet in Laube are not stated to be relative. The Examiner correctly characterizes the limitation of Laube as it merely identifies and transmits coordinates but does not go into the specifics as how they are defined.

For purposes of combinability within 35 U.S.C. § 103, a person of ordinary skill in the art would have recognized what Laube teaches only generally, Lamb expands upon and details. Lamb's abstract as well as the Examiner-relied upon teachings at column 6, lines 32-35, provide teachings of an obvious embellishment of the teachings of Laube. Data may be characterized as located anywhere within a working area by means of absolute or relative positioning and properties associated therewith. The capabilities of Lamb obviously would have extended those already taught in a more generic manner in Laube. Moreover, as recognized as part of the summary of the invention at column 2 at lines 30 through 34, an advantage of Lamb's system is to permit a less rigid structure or formatting of data from prior art approaches. With respect to 35 U.S.C. § 103, the artisan would well appreciate that this is an enhancement over Laube since it would permit Laube to transmit more data on a limited bandwidth transmission

line.

Lastly, we treat the features of independent claim 29 which relate to the sketch pad in Figure 2 of Appellants' disclosed invention. We agree with the Examiner's reasoning of combinability as well as the treatment of Appellants' arguments in the latter pages on the Brief on appeal in the Answer.

Initially, we note that Appellants do not express any traversal of the combinability of the teachings of Torihata with those in Laube within 35 U.S.C. § 103 at pages 21 and 22 of the Brief. The basic theme of the arguments here have been well addressed by the Examiner and appear to be bottomed on the allegation that the combination of teachings does not read upon the identified features within the claim. For our purposes here, it is sufficient to note that Figures 1 and 2 of Laube appear to have corresponding illustrative teachings in Figures 8 and 9 of Torihata. Both references teach the separate or independent nature of the telephone and graphical tablets as well as their respective functionalities. Appellants' positions at page 22 of the Brief appear to mischaracterize the issue by focusing on the functional recitations of independent claim 29 that are taught and relied upon by the Examiner in Laube rather than in Torihata as alleged in the Brief.

No Reply Brief has been filed in this appeal to contest any of the Examiner's responsive arguments in the Answer.

CONCLUSION AND DECISION

The Examiner's rejection of dependent claim 3 within the second paragraph of 35 U.S.C. § 112 is reversed. The separately stated rejections of various claims under 35 U.S.C. § 102 and 35 U.S.C. § 103 are all affirmed.

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Since these art rejections encompass all the claims on appeal, the decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

peb

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